

SERVICE DATE - MARCH 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 218X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
KOOTENAI COUNTY, ID

Decided: March 11, 2005

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 5.25-mile line of railroad known as the Coeur d'Alene Industrial Lead from milepost 2.25 near Feeley Spur to milepost 7.50 near Gibbs, in Kootenai County, ID. Notice of the exemption was served and published in the Federal Register on December 16, 2004, (69 FR 75379-80). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on January 15, 2005, but on December 22, 2004, Pan American Railway, Inc. (PARI) filed a notice of intent to file an offer of financial assistance (OFA) to purchase the entire line. PARI simultaneously requested that UP provide it with the information prescribed at 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line, UP's most recent reports on the physical condition of the line, UP's estimate of the net liquidation of the line, and supporting data. Also, PARI requested the Board to toll the time period for submitting its OFA until 10 days after UP provides the necessary information. By decision served January 5, 2005, UP was directed to provide PARI with the requested information to enable PARI to file an OFA, and the deadline for PARI to file its OFA was extended until 10 days after PARI's receipt of the required information, and the effective date of the exemption was extended until 20 days after PARI's receipt of the required information.

By petition filed on December 29, 2004, the North Idaho Centennial Trail Foundation (NICTF) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, to negotiate with UP for acquisition of the right-of-way for use as a recreation trail.¹ On January 11, 2005, UP indicated its willingness to negotiate with NICTF for interim trail use and its agreement with imposition of a public use condition. By decision

¹ The Board's Section of Environmental Analysis concluded that the right-of-way may be suitable for public use following abandonment.

served on January 14, 2005, the Board held the requests for issuance of a notice of interim trail use and for issuance of a public use condition pending completion of the OFA process.²

On March 7, 2005, UP submitted a letter stating that, on January 25, 2005, it had provided PARI with the required property information pursuant to 49 CFR 1152.27(c)(2)(ii) (C), to enable PARI to prepare an OFA.³ If PARI received the required information on January 25, 2005, PARI's OFA would have been due February 4, 2005, and the effective date of the exemption would have been postponed until February 14, 2005. In any event, on March 10, 2005, PARI notified the Board that it has decided not to go forward with the OFA. The OFA process is therefore terminated and, with the termination of the OFA process, it is now appropriate to issue a NITU and to impose a public use condition. The exemption will become effective on the service date of this decision, subject to conditions imposed previously and those impose in this decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The exemption will become effective on the service date of this decision and notice, subject to any previously imposed conditions and the additional conditions imposed in this decision.

² The January 14, 2005 decision imposed environmental conditions requiring that UP: (1) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) consult with the Idaho Department of Environmental Quality prior to salvage activities to ensure that the proposed abandonment and salvage of the Coeur d'Alene Industrial Lead Line would not pose any adverse impacts to human health and safety.

³ Because the extension were not date specific, the January 5, 2005 decision directed UP to notify the Board when it furnished the requested information to PARI that the due date for filing OFA's and the effective date of the exemption could be determined. Search of the Board's records indicated that no notification had been received from UP until it filed its March 7 letter.

3. Upon reconsideration, the notice served and published in the Federal Register on December 16, 2004, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below for a period of 180 days from the service date of this decision and notice (until September 10, 2005).

4. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, UP may discontinue service and salvage the track and related materials. UP shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days to enable any state or local governmental agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before September 10, 2005, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied, or assessed against, the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

7. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by September 10, 2005, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary